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OCT 14 1993

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RECEIVED

OCT 08 1993

CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
not-for-profit religious)
corporation;)

Plaintiff,)

vs.)

GERALD ARMSTRONG; THE GERALD)
ARMSTRONG CORPORATION, a)
California corporation; DOES)
1-25, inclusive;)

Defendants.)

Case No. BC 084 642

DEFENDANTS' REPLY IN SUPPORT
OF SPECIAL MOTION TO STRIKE
COMPLAINT; DECLARATION OF FORD
GREENE; DECLARATION OF GERALD
ARMSTRONG

Date: October 6, 1993
Time: 8:30 a.m.
Dept: 30

Discovery Cut Off: None
Motion Cut Off: None
Trial Date: None

COPY

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1 **I. INTRODUCTION**

2 Scientology wants to assert the claim that it has purchased
3 Gerald Armstrong's First Amendment right to freedom of speech.
4 Maybe it bought what is priceless, but that issue has not been
5 resolved yet and still remain before the Court of Appeal. What it
6 must do, however, is play by the rules. In its opposition
7 Scientology exploits its failures by attempting to attribute them
8 to Armstrong. First, it fails to give Armstrong notice of the
9 transfer of this case from Department 83 to Department 30. Then
10 it claims that Armstrong's submission of the motion to strike to
11 Department 83 compels the conclusion that the motion is intended
12 to delay and is frivolous because the case is really in Department
13 30.

14 Scientology's dishonesty is further shown by its claim that
15 it wants to consolidate Armstrong III with Armstrong II, yet it
16 never responded to Armstrong's request that it stipulate to the
17 consolidation of the two cases made one week before the motion was
18 filed. ^{1/}

19
20
21 ¹ Part of the everyday practice of Scientology's counsel
22 seems to include deception of opposing counsel and the Court.
23 During the course of the proceedings before Judge Sohigian
24 regarding the preliminary injunction Mr. Wilson tried to re-open
25 the evidentiary phase of the proceedings by submitting a
26 declaration of his co-counsel, scientologist lawyer, Laurie
27 Bartilson. Judge Sohigian asked Mr. Wilson "Do you apologize or
28 was that part of a program on your part to use whatever weight and
muscle you could use to take advantage of the defendant?" When
Mr. Wilson denied that his action was "part of any program" Judge
Sohigian said "I don't believe you ... [¶] I just think that's an
absolute affront ... [it] really strains anybody's capacity for
flexible belief. And it certainly strains mine. I just don't
believe it." (Greene Decl. Ex. F at 9:3-11:25)

1 Thus, despite such usual rhetoric, ^{2/} Scientology fails to
2 address the substantial identity between Armstrong III and
3 Armstrong II that Armstrong specifically enumerated in his moving
4 papers; thus it concedes the merit of Armstrong's procedural
5 arguments submitted in support of his special motion to strike.

6 Such substantial identities are as follows:

7 <u>Nature of Conduct</u>	<u>Armstrong II</u>	<u>Armstrong III</u>
8 ▶ Working for Ford Greene	3rd Cause/Action	1st Cause/Action
9 ▶ Providing video 10 interview for Jerry Whitfield	Basis for contempt OSC	2nd Cause/Action
11 ▶ Sending letter dated 12 12/22/92	Basis for contempt OSC	3rd Cause/Action

13 The only causes of action in Armstrong III that were not
14 addressed in Armstrong II are based upon Armstrong's exercise of
15 his First Amendment right to free speech here by speaking his
16 thoughts about his experiences in Scientology, its history and his
17 present relationship to the organization. He gave (1) a public
18 talk about Scientology (4th Cause/Action); (2) an interview to
19

20 ² Displaying its customary bent towards deprecatory
21 characterizations of its opponents on one hand and outright
22 disregard for reality on the other, Scientology claims that
23 Armstrong's motion is superfluous because it was transferred to
24 this Court (Opp. at 1:21-23), yet omits that despite the Court's
25 order it never sent a copy of the order transferring the case to
26 Armstrong. Further, despite the fact that Armstrong had
27 requested, in writing, that Scientology stipulate to the
28 consolidation of the two cases (Decl. of Ford Greene, Ex. A), it
never responded and now postures itself as seeking "consolidation
of the two claims." (Opp. at 1:26.) Thus, while refusing to
stipulate to consolidate the two actions and forcing Armstrong to
respond, Scientology now claims that the special "motion to strike
is patently interposed solely to delay." (Opp. at 2:3-4.)

In its customary castigation of Armstrong what Scientology
has skipped is to address most of the arguments set forth in
Armstrong's special motion to strike.

1 and was quoted in Newsweek magazine (5th Cause/Action); (3) an
2 interview to and was televised in Entertainment Television (6th
3 Cause/ Action); and (4) by being willing to give (but due to
4 Scientology's threats not actually giving) an interview to KFAX
5 Radio (7th Cause/Action).

6 Armstrong III seeks (1) to avoid the stay in Armstrong II and
7 not properly supplement or amend its complaint therein; (2) to
8 punish Armstrong for filing the a declaration on behalf of
9 Lawrence Wollersheim by requiring him to respond and to pay filing
10 fees in order to do so; and (3) to punish Armstrong's vigorous
11 exercise of his right to free speech. Therefore, the action is
12 clearly a Strategic Lawsuit Against Public Participation (SLAPP)
13 suit which Code of Civil Procedure section 425.16 was designed to
14 stop.—It is bad faith for Scientology to duplicate pre-existing
15 litigation that has been stayed by filing a new lawsuit, refuse to
16 stipulate to the consolidation of the two lawsuits, and to cause
17 Armstrong to undertake the cost of defending against an
18 unnecessary lawsuit and then say we "just don't want to waive any
19 claim against Armstrong for breach of contract."

20 **II. ARMSTRONG'S REBUTTAL TO SCIENTOLOGY'S STATEMENT OF FACTS**

21 To counter Scientology's effort to place a spin on the
22 litigation in its favor, Armstrong sets forth the following
23 salient facts:

24 1. Armstrong signed the settlement contract based upon the
25 advice of his attorney that the provisions that Scientology seeks
26 to enforce in Armstrong II and Armstrong III are not worth the
27 paper they were printed on, including paragraphs 7D, 7G, 7H, 10.
28 (Greene Decl., Ex. B. Armstrong Depo. Vol. I, 150:13-152:22)

1 2. Armstrong was coerced into signing the settlement
2 contract by his lawyer and other individuals who wanted the
3 "global settlement" to go forward. He, and others were flown to
4 California to sign the contract without ever having seen it. (Id.
5 at 156:25-157:6.) Armstrong knew that others had signed the
6 contract, his attorney told him that it was not enforceable and
7 one of the signatories was screaming at him to sign it. (Id. at
8 159:159:8-22.) His attorney also said Scientology had subjected
9 him to "fair game" activities such as sabotaging his airplane,
10 ruining his marriage and attempting to frame him with the forgery
11 of a \$2 million check. (Id. at 154:1-155:4.) If he didn't sign
12 the contract, Armstrong would have his attorneys angry at him and
13 afraid for their lives, and witnesses who would not help him and
14 who would have turned against him. He had been positioned as a
15 deal breaker and felt manipulated, trapped and abused. (Id. at
16 155:24-156:20; see also Defendant's Exhibits in Support of Motion
17 to Strike, Ex. B, Decl. of G. Armstrong at ¶¶ 10-17.)

18 3. Armstrong has never spread lies or rumors about
19 Scientology. Indeed, it is Scientology's own misconduct that
20 results in judicial characterizations of it that its ostrich-like
21 compulsion for denial can only call "lies." (Defendant's Exhibits
22 in Support of Motion to Strike, Ex. B, Decl. of G. Armstrong, Ex.
23 3 thereto, Opinion of Paul G. Breckenridge, Jr. filed June 22,
24 1984.) Further, in 1990, the only litigant that Armstrong sought
25 to aid was himself in Scientology's appeal of Judge Breckenridge's
26 decision in Armstrong I which Paragraph 4B of the settlement
27 contract prohibited him from doing. (Greene Decl. Ex. C,
28 Respondent's Petition for Permission to File Response And For An

1 Extension Of Time To File Response filed February 28, 1990 in
2 Church of Scientology of California v. Gerald Armstrong, Second
3 District Court of Appeal, Div. 3, Case No. B025920.) The only
4 thing that Armstrong has really asked Scientology to do is to
5 repudiate its policy of opportunistic hatred, "fair game." (Ex. E
6 to Opp, Armstrong Letter to Eric Lieberman dated 6/21/91.)

7 4. When Scientology sought injunctive relief before Judge
8 Sohigian, it asked the Court to enforce the entire agreement.
9 (Greene Decl. Ex. D, Motion for Preliminary Injunction). The
10 Court refused to enforce any of the provisions prohibiting
11 Armstrong from exercising his right to free speech. (Ex. H to
12 Opp, preliminary injunction.)

13 5. Based upon Armstrong's discussions with Scientology's
14 counsel, Andrew Wilson during the course of his July 22, 1992
15 session of Mr. Armstrong's deposition, Mr. Wilson advised him that
16 the performance of routine clerical and paralegal duties were not
17 considered to be violations of a reasonable reading of the
18 injunction. (See, Greene Decl. Ex. E, Armstrong Depo. 7/22/92 at
19 pp. 190:2-191:15, 197:3-198:10, 199:19-200:6). Mr. Wilson made
20 similar representations to Judge Sohigian stating that a
21 "reasonable construction of the contract" would not prohibit
22 Armstrong from engaging in routine office tasks, even if against
23 Scientology. (Greene Decl. Ex. F at 48:28-51:11, Transcript of
24 Proceedings on Motion for Preliminary Injunction held May 27,
25 1992.) Based upon the foregoing, Judge Wayne refused to even hold
26 a contempt hearing regarding Armstrong's alleged violations of the
27 injunction until the legality of the injunction was ruled upon by
28 the Court of Appeal. (Greene Decl. Ex. G, Transcript of

1 Proceedings on Order to Show Cause re Contempt held March 5,
2 1993.)

3 **III. THE SLAPP STATUTE APPLIES TO THIS CASE**

4 Scientology has not denied Armstrong's claim, indeed it has
5 not even addressed the claim, that Armstrong III, filed July 8,
6 1993, is in retaliation for Armstrong's participation by
7 submitting a declaration in Church of Scientology of California v.
8 Wollersheim, Los Angeles County Superior Court Case No. BC 074
9 815. (Defendant's Exhibits in Support of Motion to Strike, Ex. B,
10 Decl. of G. Armstrong at ¶ 26, Ex. 4 thereto.)

11 Furthermore, causes of action four through seven each is
12 directed at conduct which is at the heart of the First Amendment
13 concept of the "marketplace of ideas," where Armstrong is a
14 stalwart vendor whose competition Scientology has not the breadth
15 of mind or purity of purpose to tolerate.^{3/} Indeed, in this

16
17 ³ The "marketplace of ideas" theory of First Amendment
18 free speech jurisprudence is the foundation upon which the First
19 Amendment primarily rests. "[The First] Amendment rests upon the
20 assumption that the widest possible dissemination of information
21 from diverse and antagonistic sources is essential to the welfare
22 of the public. . . ." (Citizens Publishing Co. v. United States
23 (1969) 394 U.S. 131, 139-140.) It was Justice Brandeis, however,
24 who most eloquently set forth the rationale underlying the First
25 Amendment. He said:

21 "Those who won our independence believed that the final
22 end of the state was to make men free to develop their
23 faculties, and that in its government the deliberative
24 force should prevail over the arbitrary. They valued
25 liberty both as an end and as a means. They believed
26 liberty to be the secret of happiness and courage to be
27 the secret of liberty. They believed the freedom to
28 think as you will and to speak as you think are means
indispensable to the discovery and spread of political
truth; that without free speech and assembly discussion
would be futile; that with them, discussion affords
ordinarily adequate protection against the dissemination
of noxious doctrine; that the greatest menace to freedom
is an inert people; that public discussion is a
(continued...)

lawsuit Scientology again misuses the legal system out of a desire to turn in into an engine that would destroy the very rights it guarantees. (See Part III-D of Armstrong's Moving Memorandum, at pp. 11-12.)

IV. SCIENTOLOGY CANNOT SHOW A PROBABILITY OF SUCCESS

The primary point, on strictly procedural grounds, that Armstrong makes is that Scientology erred in filing Armstrong III as a separate action. It should have been filed as a supplemental complaint in Armstrong II. Instead, since Scientology has used the legal system as an implement of punishment, the SLAPP statute properly comes into play. Scientology addresses Armstrong's point that Code of Civil Procedure section 1047 does not apply with one case, Yates v. Kuhl (1955) 130 Cal.2d 536, 279 P.2d 563. Scientology improperly analogizes between Yates and the instant case by arguing that the grant of a preliminary injunction here was the equivalent (despite the legal fact that the issuance of a preliminary injunction is not intended to be an adjudication on the merits) of the judgment in Yates. In Yates, the defendant

³(...continued)

political duty; and that this should be a fundamental principle of American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law - the argument of force in its worst form."

(Whitney v. California (1927) 274 U.S. 357, 375-376)

1 took the position that plaintiff was precluded from litigating the
2 claims set forth in the second case, and limited solely to the
3 remedy of contempt. In the case at bar, Armstrong does not say
4 Scientology cannot litigate its claims. He says that Scientology
5 cannot circumvent the stay order. He says Scientology cannot
6 retaliate against and punish him for what he says is the vigorous
7 exercise of his First Amendment rights by making him respond to an
8 entirely new lawsuit. He says that the proper remedy for what
9 Scientology calls breach of contract is a supplemental or amended
10 complaint, not a new lawsuit.

11 In Yates, the Court held that the judgment therein was res
12 judicata on all issues that were presented or could have been
13 presented at trial. That is precisely Armstrong's point.
14 Armstrong says that the dispositive issue is whether or not the
15 provisions of the settlement contract that Scientology wants to
16 enforce are illegal. If those provisions are illegal, said
17 illegality will not change with the filing of a new lawsuit and
18 Scientology will not be able to run to Court every time that
19 Armstrong talks to the media or testifies adversely to it in a
20 judicial proceeding. This is the point which Scientology ignores
21 in its opposition papers.

22 As it must, Scientology ignores Armstrong's position that the
23 reason Armstrong III does not fall within the scope of Code of
24 Civil procedure section 1047 is because there is an identity of
25 issues between it and Armstrong II. Specifically, the issue which
26 is identical in both actions is whether or not the provisions that
27 Scientology would have the Court enforce are, in fact, legal and
28 enforceable.

1 Code of Civil Procedure section 1047, allowing for successive
2 actions upon the same contract, does not control when the second
3 action involves the same cause of action as the first, that is,
4 whether or not the settlement contract is enforceable. The reason
5 for this is that a "final adjudication of such issue in the first
6 case will be a bar to the same issue in the second, and that is
7 the test for determining whether or not the identity of the matter
8 involved in both actions is the same." (Dodge v. Superior Court
9 (1934) 139 Cal.App. 178, 33 P.2d 695, 696.) Scientology has
10 refused to address Dodge. Instead, it attempts to expand Yates.
11 That the claims are different is irrelevant because it is the
12 issue of the contract's enforceability that counts in this
13 litigation.

14 V. CONCLUSION

15 Armstrong's motion to strike should be granted.

16 In filing Armstrong III Scientology is trying to circumvent
17 the stay in Armstrong II and attempt to conduct discovery in
18 Armstrong III that pertained to Armstrong II. Furthermore, and
19 for the purposes of this motion Scientology's filing of Armstrong
20 III was to punish Armstrong for testifying in the Wollersheim case
21 and for freely speaking to the press and others about the nature
22 of Scientology. Instead of answering an amended or supplemental
23 complaint, Armstrong has had to pay fees for first filing.
24 Instead of simply applying the answer he already has on file in
25 defense to the latest set of allegations, his counsel has had to
26 draft these responsive pleadings. Such abusive litigation is not
27 designed to protect Scientology's rights, but to punish and hurt
28 Armstrong. If Scientology did not intend to harm Armstrong by the

1 filing and serving of Armstrong III, it would have sought leave to
2 file an amended or supplemental complaint. At least, it would
3 have agreed to the request of Armstrong's counsel that it
4 stipulate that the cases be consolidated. Instead, it chose to
5 ignore counsel's request.

6 Scientology's bad faith is underscored by its arrogant
7 statement that the motion "is predicated on a lengthy and
8 erroneous agreement [sic?] that plaintiff sought to have this
9 action put before a different judge when in fact this case was
10 already assigned to this Court before Armstrong filed this motion"
11 (Opp. at 14:7-10) when it never gave notice to Armstrong that the
12 case had been ordered to Department 30. Again, it tries to
13 manufacture error by exploiting its own duplicitous disregard of
14 its obligation to give Armstrong notice of the transfer of the
15 case from Department 83 to Department 30 in an attempt to convince
16 this Court that Armstrong's arguments are frivolous and solely
17 intended to delay. It is Scientology which should be sanctioned
18 by having its SLAPP suit dismissed and monetary sanctions awarded.

19 From such conduct it is manifest that Armstrong III indeed is
20 a Strategic Lawsuit Against Public Participation. As such,
21 Armstrong respectfully submits that his special motion to strike
22 should be granted.

23 DATED: October 3, 1993

24 HUB LAW OFFICES

25
26 By: 

FORD GREENE

Attorney for Defendants

GERALD ARMSTRONG and THE

GERALD ARMSTRONG CORPORATION

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: DEFENDANTS' REPLY IN SUPPORT OF SPECIAL MOTION TO STRIKE COMPLAINT; DECLARATION OF FORD GREENE; DECLARATION OF GERALD ARMSTRONG

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

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MAIL

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (Personal) I caused said papers to be personally service on the office of opposing counsel.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: October 4, 1993